



Proving Veteran Business Owner is Highest Compensated Employee

Issue:

This brief explains the verification requirement that a Veteran or Service-Disabled Veteran business owner must be compensated in an amount equal to or higher than any non-Veteran director, officer, or employee of the business. If a Veteran owner is not the highest compensated, the applicant must explain how the Veteran taking lower compensation benefits the concern.

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 CFR § 74.4(g)(3) provides that non-Veterans may not “receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, which exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest-ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.”

What This Means:

- While receiving a lower salary compensation than non-Veteran owners may be found as a bar to establishing control of an applicant or participant, the Center for Verification and Evaluation (CVE) may find that the requirement of 38 CFR § 74.4(g)(3) has been satisfied where the applicant or participant demonstrates that the Veteran/Service-Disabled Veteran owner receives total compensation in an

amount more than the total compensation received by each non-Veteran employee, director or owner. If the Veteran does not, CVE may find that this requirement is satisfied if the applicant or participant has provided a written statement explaining that the Veteran has elected to take less compensation and why doing so benefits the concern. This requirement may be satisfied where the applicant’s business documentation shows that the Veteran receives compensation at least equal to that of the non-Veteran directors, employees, and owners. Importantly, salary is not the only factor in determining compensation. Total compensation must be considered to determine whether the requirements of 38 CFR § 74.4(g) have been met. For example, if a Veteran makes \$70,000 in salary and \$10,000 in dividends annually, and the non-Veteran president of the company makes \$60,000 in salary and \$25,000 dividends annually, the requirement will not be met. The combined compensation of the Veteran does not equal or exceed that of the non-Veteran employee.

- If the Veteran provides an explanation that he or she elected to receive lower compensation, it is important to show how the applicant benefits (rather than how the Veteran benefits personally). Explanations solely demonstrating personal benefits are insufficient to satisfy the verification requirement.
- Examples of adequate explanations can be: (1) that the Veteran will be able to retain highly skilled employees by electing to compensate those employees rather than taking a higher salary; (2) the current

business and economic situations are such that revenue is not sufficient to compensate the Veteran and operational costs are more critical; and (3) the applicant is a start-up company and the Veteran must use resources for start-up costs to ensure the company's success. This list of examples is not all-inclusive. CVE will assess the totality of the circumstances of every applicant when making a determination of eligibility.

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**VA Office of Small and Disadvantaged
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